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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

13 14 15 16 17 18 19 20 21 22 23 24 25 26	<p>YELLOWCAKE, INC., California corporation, Plaintiff, v. HYPHY MUSIC, INC., Defendant.</p>	<p>Case No.: 1:20-cv-00988-JLT-BAM [Assigned to the Hon. Jennifer L. Thurston] HYPHY MUSIC, INC.'S SEPARATE STATEMENT OF UNDISPUTED FACTS IN OPPOSITION TO JESUS CHAVEZ, SR.'S MOTION FOR SUMMARY JUDGMENT</p>
20 21 22 23 24 25 26	<p>HYPHY MUSIC, INC., Counterclaimant, v. YELLOWCAKE, INC.; COLONIZE MEDIA, INC; JOSE DAVID HERNANDEZ; and JESUS CHAVEZ SR, Counter-Defendants.</p>	<p>Date: September 29, 2023 Time: 9:00 a.m. Dept.: Courtroom 4 (7th Floor) 2500 Tulare Street Fresno, CA 93721 Judge: Hon. Jennifer L. Thurston</p>

1 Pursuant to Federal Rule of Civil Procedure 56 and Eastern District of
2 California Local Rule 260, Defendant/Counterclaimant Hyphy Music, Inc.
3 (“*Hyphy*”) hereby responds to the Separate Statement of Undisputed facts submitted
4 by Counter-Defendant Jesus Chavez, Sr. (“*Chavez*”) in support of Chavez’s Motion
5 for Summary Judgment filed on or about July 14, 2023 (the “*Motion*”).

6 **I.**

7 **SUMMARY JUDGMENT SHOULD BE GRANTED IN FAVOR OF CROSS-**
8 **DEFENDANT AS CROSSCLAIMANT CANNOT SHOW THAT CHAVEZ**
9 **BREACHED THEIR AGREEMENT**

<u>Moving Party’s Undisputed Material Facts and Supporting Evidence</u>	<u>Opposing Party’s Response and Evidence</u>
13 1. Counterclaimant alleges that it 14 entered into an oral exclusive 15 recordings agreement (the “Oral 16 Agreement”) with Chavez in or about 17 February 2013. 18 <u>Supporting Evidence:</u> 19 Counterclaimant’s First Amended 20 Counterclaim (“FAC”) ¶ 16, 78 attached as Exhibit “B” to the Statement of Evidence (“SOE”); Request for Judicial Notice (“RJN”) at ¶ 1 attached as Exhibit “C” to the SOE. 21	Undisputed.
22 2. Counterclaimant alleges that the 23 Oral Agreement was for a period of 24 five (5) years pursuant to which 25 Chavez was to exclusively provide services as a recording artist in the making of sound and audio-visual recordings with respect to the Los Originales Albums. 26 <u>Supporting Evidence:</u> 27 FAC ¶ 16, 78 attached as Exhibit “B”	Disputed, to the extent that such an assessment of the terms of the Oral Agreement fails to include other alleged terms thereof, including, without limitation, that Hyphy agreed to: 1) select the musical compositions to be recorded on the Los Originales Albums; 2) commission and/or provide the sound engineers and audio visual directors; 3) produce the musical performances to be embodied on the Los Originales Albums; 4) direct the recording and filming of musical and the audio visual

<u>Moving Party's Undisputed Material Facts and Supporting Evidence</u>	<u>Opposing Party's Response and Evidence</u>
<p>3 to the SOE; RJD at ¶ 1 attached as 4 Exhibit "C" to the SOE.</p>	<p>performances to be embodied on the Los Originales Albums; and 5) pay Chavez a fixed amount per Los Originales Album. First Amended Counterclaims ("FACC") at ¶ 16 (Dkt. 15).</p>
<p>7 3. Counterclaimant alleges that, in 8 consideration for the services provided 9 and payment thereto, Chavez agreed 10 that Counterclaimant would be the 11 owner of all title, right, and interest in 12 and to the Los Originales Albums (including without limitation the copyrights and any extensions and 13 renewals thereto) from the inception of the creation of each Los Originales Album.</p>	<p>Disputed, to the extent that such an assessment of the terms of the Oral Agreement fails to include other alleged terms thereof, including, without limitation, that, in exchange for Hyphy's agreement to: 1) select the musical compositions to be recorded on the Los Originales Albums; 2) commission and/or provide the sound engineers and audio visual directors; 3) produce the musical performances to be embodied on the Los Originales Albums; 4) direct the recording and filming of musical and the audio visual performances to be embodied on the Los Originales Albums; and 5) pay Chavez a fixed amount per Los Originales Album, Chavez agreed to follow Hyphy's artistic direction, perform and record the sound and audiovisual recordings embodying the musical compositions chosen and produced by Hyphy, and grant Hyphy the non-exclusive right to utilize Chavez's name and likeness in connection with the exploitation of the Los Originales FACC at ¶ 16 (Dkt. 15).</p>
<p>21 4. Counterclaimant alleges that, in or 22 about April 2019, Chavez breached the 23 Oral Agreement by without limitation, 24 purportedly transferring, licensing, 25 selling, and/or authorizing Counter- 26 defendants Yellowcake, Inc. and 27 Colonize Media, Inc. to exploit the Los 28 Originales Albums and Cover Art.</p> <p>Supporting Evidence:</p> <p>FAC ¶ 79 attached as Exhibit "B" to the SOE; RJD at ¶ 1 attached as</p>	<p>Undisputed.</p>

<u>Moving Party's Undisputed Material Facts and Supporting Evidence</u>	<u>Opposing Party's Response and Evidence</u>
3 Exhibit "C" to the SOE.	
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 5. Counterclaimant alleges that, at the time of the transfer to Yellowcake, Chavez possessed no transferable rights with respect to the Los Originales Albums.	Disputed, to the extent it mischaracterizes Hyphy's allegations, which are that Chavez transferred his ownership and rights in the Los Originales Albums that Chavez had no such rights to grant.
7 Supporting Evidence: 9 10 FAC ¶ 23 attached as Exhibit "B" to the SOE; RJN at ¶ 1 attached as Exhibit "C" to the SOE.	FACC at ¶ 23 (Dkt. 15)
11 12 13 14 15 16 17 18 19 20 21 22 23 24 6. Counterclaimant admits that Chavez was not an employee of Counterclaimant.	Undisputed.
13 Supporting Evidence: 14 Deposition Transcript of Jose Martinez ("Martinez Dep.") at pp. 39:18-20 attached as Exhibit "E" to the SOE; Declaration of William H. Littlewood ("Littlewood Decl.") at ¶ 3 attached as Exhibit "D" to the SOE. Counterclaimant's Responses to Counter-Defendants' First Set of Interrogatories, Response to Interrogatory ("SROG Response") No. 11 attached as Exhibit "F" to the SOE; Littlewood Decl. at ¶ 4 attached as Exhibit "D" to the SOE. Counterclaimant's Responses to Counter-Defendants' First Set of Requests for Production of Documents ("RPD Response") Nos. 23-24 attached as Exhibit "G" to the SOE; Littlewood Decl. at ¶ 5 attached as Exhibit "D" to the SOE.	
25 26 27 28 7. Counterclaimant admits that none of the Los Originales band members were employees of Counterclaimant.	Undisputed. The group operated as a co-equal partnership comprised of Chavez, accordion player Domingo Torres Flores ("Flores") and drummer Alfonso Vargas ("Vargas").

<p style="text-align: center;"><u>Moving Party's Undisputed Material Facts and Supporting Evidence</u></p>	<p style="text-align: center;"><u>Opposing Party's Response and Evidence</u></p>
<p>Martinez Dep. at pp. 39:21-23 attached as Exhibit "E" to the SOE; Littlewood Decl. at ¶ 3 attached as Exhibit "D" to the SOE.</p>	<p>Begakis Decl. at ¶ 9, Exhibit "I" thereto, Deposition Transcript of Alfonso Vargas ("Vargas Depo") at 7:16-19, 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 10, Exhibit "J" thereto, Deposition Transcript of Domingo Torres Flores ("Flores Depo") at 47:15-25, 48:19-23, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 11, Exhibit "K" thereto, Chavez Depo I at 18:16-19:3, 20:8-16, 21:16-19; Begakis Decl. at ¶ 12, Exhibit "L" thereto, Chavez Depo II at 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.</p>
<p>8. There is no written agreement between Counterclaimant and Chavez substantiating an alleged work for hire relationship between the parties.</p> <p>Supporting Evidence:</p> <p>RPD Response Nos. 23-24 attached as Exhibit "G" to the SOE; Littlewood Decl. at ¶ 5 attached as Exhibit "D" to the SOE.</p>	<p>Undisputed.</p>
<p>9. There is no written agreement between Counterclaimant and Chavez whereby Chavez agreed that Counterclaimant would be the owner of all title, right, and interest in the Los Originales Albums.</p> <p>Supporting Evidence:</p> <p>Martinez Dep. at pp. 39:25-40:24; 125:19-126:11 attached as Exhibit "E" to the SOE; Littlewood Decl. at ¶ 3 attached as Exhibit "D" to the SOE. RPD Response Nos. 23-24 attached as Exhibit "G" to the SOE; Littlewood Decl. at ¶ 5 attached as Exhibit "D" to the SOE.</p>	<p>Undisputed.</p>

1

2 **HYPHY'S ADDITIONAL UNDISPUTED MATERIAL FACTS**

3

4 **I. HYPHY AND CHAVEZ WERE PARTIES TO AN ENFORCEABLE**

5 **AGREEMENT THAT CHAVEZ BREACHED**

6

<u>Hyphy's Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez's Responses and Supporting Evidence</u>
1. Hyphy is a record label in the business of collaborating with recording artists to produce, distribute, and otherwise exploit sound and audiovisual recordings by such artists, coupled with artwork. Declaration of John Begakis (<i>Begakis Decl.</i>) at ¶ 6, Exhibit "F" thereto, Jose Martinez Deposition Transcript (<i>Martinez Depo</i>) at 13:6-14:6.	
2. Counter-Defendant Jesus Chavez Sr. (<i>Chavez</i>) is the lead singer of the Spanish-language musical group Los Originales De San Juan (the <i>Group</i>). Begakis Decl. at ¶ 11, Exhibit "K" thereto, Jesus Chavez, Sr. Deposition, Volume I (<i>Chavez Depo I</i>) at 25:13-14; Begakis Decl. at ¶ 12, Exhibit "L" thereto, Jesus Chavez, Sr. Deposition, Volume II (<i>Chavez Depo II</i>) at 16:22-17:5.	
3. The Group operates as a co-equal partnership comprised of Chavez, accordion player Domingo Torres Flores (<i>Flores</i>), and drummer	

<u>Hyphy's Undisputed Material Facts</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>1 and Supporting Evidence</p> <p>2 Alfonso Vargas (“<i>Vargas</i>”).</p> <p>3</p>	
<p>4 Begakis Decl. at ¶ 9, Exhibit “I” thereto, <p>5 Deposition Transcript of Alfonso Vargas <p>6 (“<i>Vargas Depo</i>”) at 17:16-19, 27:17-22, <p>7 143:7-10, 143:14-16, 143:17-20, 143:25- <p>8 144:3, 144:4-7; Begakis Decl. at ¶ 10, <p>9 Exhibit “J” thereto, Deposition <p>10 Transcript of Domingo Torres Flores <p>11 (“<i>Flores Depo</i>”) at 47:15-25, 48:19-23, <p>12 82:13-15, 82:22-83:2, 83:4-13, 85:25- <p>13 86:11, 86:13-21; Begakis Decl. at ¶ 11, <p>14 Exhibit “K” thereto, Chavez Depo I at <p>15 18:16-19:3, 20:8-16, 21:16-19; Begakis <p>16 Decl. at ¶ 12, Exhibit “L” thereto, <p>17 Chavez Depo II at 20:20-21:16, 26:13- <p>18 20, 31:8-16, 33:18-34:1, 38:8-18, 41:13- <p>19 42:2.</p> </p></p></p></p></p></p></p></p></p></p></p></p></p></p></p>	
<p>20 4. In or about February 2013, Hyphy <p>21 and the Group began working <p>22 together to co-create various sound <p>23 recordings to be embodied on <p>24 multiple albums (collectively, the <p>25 “<i>Los Originales Albums</i>” or <p>26 “<i>Albums</i>”), which they had orally <p>27 agreed amongst themselves were to <p>28 be owned by Hyphy (the <p>29 “<i>Agreement</i>”).</p> <p>30 Declaration of Jose Martinez (“<i>Martinez <p>31 Decl.</p></i>”) at ¶ 3; Begakis Decl. at ¶ 11, <p>32 Exhibit “K” thereto, Chavez Depo I at <p>33 34:7-11; Begakis Decl. at ¶ 12, Exhibit <p>34 “L” thereto, Chavez Depo II at 19:14-17, <p>35 32:16-20, 35:12-21.</p> <p>36 5. The albums created pursuant to the <p>37 Agreement were entitled (1) <p>38 “Amigos y Contrarios”; (2)</p> </p></p></p></p></p></p></p></p></p></p></p></p></p></p></p>	

<p>1 <u>Hyphy's Undisputed Material Facts</u> 2 <u>and Supporting Evidence</u></p>	<p>1 <u>Chavez's Responses and Supporting</u> 2 <u>Evidence</u></p>
<p>3 “Corridos de Poca M”; (3) “El 4 Campesino”; (4) “Desde La Cantina 5 de Mi Barrio (En Vivo)”; and (5) 6 “Nuestra Historia (En Vivo)” 7 (collectively, the <i>“Los Originales</i> 8 <i>Albums</i>” or <i>“Albums”</i>). 9 10 Martinez Decl. at ¶ 4; Begakis Decl. at ¶ 11 6, Exhibit “F” thereto, Martinez Depo at 12 44:7-23, 51:22-25.</p>	
<p>13 6. One of the other two albums 14 identified in Yellowcake’s 15 Complaint, entitled “Chuy Chavez y 16 Sus Amigos,” has no connection to 17 this dispute and wasn’t even 18 recorded by Chavez. 19 20 Martinez Decl. at ¶ 4; Begakis Decl. at ¶ 21 6, Exhibit “F” thereto, Martinez Depo at 22 44:24:-9, 154:11-155:25.</p>	
<p>23 7. Though this Agreement was not 24 initially memorialized in writing, 25 Flores and Vargas understood that 26 such Agreement existed, and 27 therefore intended that all rights in 28 and to their recording services, and 29 the five Albums produced under the 30 Agreement and pursuant to such 31 services, be conveyed to Hyphy. 32 33 Martinez Decl. at ¶¶ 4-5. Declaration of 34 Domingo Torres Flores (“<i>Flores Decl.</i>”) 35 at ¶¶ 3-5; Declaration of Alfonso Vargas 36 (“<i>Vargas Decl.</i>”) at ¶¶ 3-5</p>	
<p>37 8. Flores and Vargas later confirmed 38 their belief and intent to convey all 39 rights in the Albums to Hyphy by 40 executing enforceable Copyright</p>	

<u>Hyphy's Undisputed Material Facts</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>Assignment Agreements on or about March 22, 2022 (collectively the “<i>Assignments</i>”)</p>	
<p>Martinez Decl. at ¶ 5, Exhibit “A” thereto.</p>	
<p>9. Unlike larger record labels, however, Hyphy closely collaborated with the Group to create the Albums.</p>	
<p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit “F” thereto, Martinez Depo at 75:6-76:25, 83:11-84:22, 84:24-85:8, 85:14-86:16.</p>	
<p>10. For the first three (of five) of the Los Originales Albums, Hyphy helped determine the “theme and overall creative direction of each Album.</p>	
<p>Martinez Decl. at ¶ 6.</p>	
<p>11. For the first three (of five) of the Los Originales Albums, Hyphy selected the songs to be included in each Album.</p>	
<p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit “F” thereto, Martinez Depo at 83:11-84:22.</p>	
<p>12. For the first three (of five) of the Los Originales Albums, Hyphy selected the recording studio and paid for all costs associated with the recording of each Album.</p>	
<p>Martinez Decl. at ¶ 6.</p>	
<p>13. For the first three (of five) of the</p>	

<u>1</u> <u>Hyphy's Undisputed Material Facts</u> <u>2</u> <u>and Supporting Evidence</u>	<u>Chavez's Responses and Supporting</u> <u>Evidence</u>
<u>3</u> <u>Los Originales Albums, Hyphy</u> <u>4</u> <u>hired the sound engineer.</u> <u>5</u> <u>Martinez Decl. at ¶ 6; Begakis Decl. at ¶</u> <u>6</u> <u>6, Exhibit "F" thereto, Martinez Depo at</u> <u>6:59:21-60:7, 61:10-16.</u>	
<u>7</u> <u>14. For the first three (of five) of the</u> <u>8</u> <u>Los Originales Albums, Hyphy paid</u> <u>9</u> <u>the Group a substantial amount to</u> <u>record the Albums.</u>	
<u>10</u> <u>Martinez Decl. at ¶ 6.</u>	
<u>11</u> <u>15. For the first three (of five) of the</u> <u>12</u> <u>Los Originales Albums, Hyphy</u> <u>13</u> <u>oversaw and generally supervised</u> <u>14</u> <u>the recording and production of</u> <u>15</u> <u>each Album.</u> <u>16</u> <u>Martinez Decl. at ¶ 6; Begakis Decl. at ¶</u> <u>17</u> <u>6, Exhibit "F" thereto, Martinez Depo at</u> <u>18</u> <u>85:14-86:16.</u>	
<u>19</u> <u>16. For the final two (of five) of the Los</u> <u>20</u> <u>Originales Albums, Hyphy also</u> <u>21</u> <u>selected and paid for the venue of</u> <u>22</u> <u>the live performance.</u> <u>23</u> <u>Martinez Decl. at ¶ 6; Begakis Decl. at ¶</u> <u>24</u> <u>6, Exhibit "F" thereto, Martinez Depo at</u> <u>25</u> <u>75:6-25.</u>	
<u>26</u> <u>17. For the final two (of five) of the Los</u> <u>27</u> <u>Originales Albums, Hyphy also</u> <u>28</u> <u>selected the songs to be performed</u> <u>at the live performance (and then</u> <u>recorded for the Albums).</u> <u>Martinez Decl. at ¶ 6; Begakis Decl. at ¶</u> <u>6, Exhibit "F" thereto, Martinez Depo at</u> <u>75:6-25.</u>	

<u>1</u> <u>Hyphy's Undisputed Material Facts</u> <u>2</u> <u>and Supporting Evidence</u>	<u>Chavez's Responses and Supporting</u> <u>Evidence</u>
<p>3 18. For the final two (of five) of the Los 4 Originales Albums, Hyphy also 5 directly employed, supervised, and 6 directed the services of the sound 7 engineer and videographer who 8 each recorded the audio and video 9 of the live performance.</p> <p>8 Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 9 6, Exhibit "F" thereto, Martinez Depo at 75:6-25.</p>	
<p>10 19. For the final two (of five) of the Los 11 Originales Albums, Hyphy also 12 wrote a script for the history of the 13 Group as presented as part of the 14 live performance, and hired an 15 "MC"/commentator who narrated 16 the script.</p> <p>15 Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 16 6, Exhibit "F" thereto, Martinez Depo at 17 75:6-25.</p>	
<p>18 20. For the final two (of five) of the Los 19 Originales Albums, Hyphy also re- 20 recorded whole portions of the 21 guitarist's contributions to the live 22 performance afterwards, using a 23 new guitarist selected, hired and 24 paid for by Hyphy.</p> <p>23 Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 24 6, Exhibit "F" thereto, Martinez Depo at 75:6-25.</p>	
<p>25 21. It should also be noted here that 26 Flores and Vargas were plainly joint 27 authors of the Albums because they 28 were equally involved in all activities of the Band, which existed</p>	

<u>Hyphy's Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>as an unincorporated partnership in which all Band members were joint owners, participants and contributors.</p> <p>Begakis Decl. at ¶ 9, Exhibit "I" thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 10, Exhibit "J" thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 11, Exhibit "K" thereto, Chavez Depo I at 18:23-19:3.</p>	
<p>22. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they were equally credited on all Albums in which each of them made contributions.</p> <p><i>See</i> Begakis Decl. at ¶ 9, Exhibit "I" thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 10, Exhibit "J" thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21.</p>	
<p>23. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they shared equally in all profits of the Band, and were granted equal access to inspect all records related to the Band's receipt of all such profits.</p>	
<p>Begakis Decl. at ¶ 9, Exhibit "I" thereto,</p>	

<u>Hyphy's Undisputed Material Facts</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>1 Vargas Depo at 27:17-22, 143:7-10, 2 143:14-16, 143:17-20, 143:25-144:3, 3 144:4-7; Begakis Decl. at ¶ 10, Exhibit 4 "J" thereto, Flores Depo at 47:15-25, 5 82:13-15, 82:22-83:2, 83:4-13, 85:25- 6 86:11, 86:13-21; Begakis Decl. at ¶ 12, 7 Exhibit "L" thereto, Chavez Depo II at 8 20:20-21:16, 26:13-20, 31:8-16, 33:18- 34:1, 38:8-18, 41:13-42:2.</p>	
<p>9 24. In addition to its original creative 10 contributions to the production, 11 recording and overall creation of the 12 Los Originales Albums, Hyphy also 13 designed and created the artwork 14 featured on the cover of each 15 Album (the "<i>Album Artwork</i>").</p>	
<p>16 Martinez Decl. at ¶ 7; Begakis Decl. at ¶ 17 6, Exhibit "F" thereto, Martinez Depo at 18 127:12-21.</p>	
<p>19 25. Hyphy released the Albums, with 20 the Album Artwork, for distribution 21 through all available digital service 22 providers ("<i>DSPs</i>") between 2013 23 and 2017.</p>	
<p>24 Martinez Decl. at ¶ 8, Exhibit "B" 25 thereto; Begakis Decl. at ¶ 6, Exhibit "F" 26 thereto, Martinez Depo at 44:7-23; 27 51:18-25; 67:24-69:5.</p>	
<p>28 26. Thereafter, Hyphy obtained 29 copyright registrations for all of 30 such Album Artwork.</p>	
<p>31 Martinez Decl. at ¶ 9, Exhibit "C" 32 thereto; Begakis Decl. at ¶ 6, Exhibit "F" 33 thereto, Martinez Depo at 133:9-136:5.</p>	
<p>34 27. Plaintiff/Counter-Defendant</p>	

<p>1 <u>Hyphy's Undisputed Material Facts</u> 2 <u>and Supporting Evidence</u></p>	<p>1 <u>Chavez's Responses and Supporting</u> 2 <u>Evidence</u></p>
<p>3 Yellowcake, Inc. (“Yellowcake”) is 4 a competing record label and 5 distributor of sound recordings, 6 utilizing Counter-Defendant 7 Colonize Media, Inc. (“Colonize”) 8 as its “distribution arm” to release 9 and exploit rights acquired by 10 Yellowcake.</p> <p>11 Begakis Decl. at ¶ 7, Exhibit “G” 12 thereto, Deposition Transcript of Kevin 13 Berger (“Berger Depo”) at 91:19-23; 14 Begakis Decl. at ¶ 8, Exhibit “H” 15 thereto, Deposition Transcript of Jose 16 David Hernandez, Volume I 17 (“Hernandez Depo I”) at 77:19-21.</p>	
<p>18 28. Counter-Defendant Jose David 19 Hernandez (“Hernandez”), who is a 20 co-owner of both Yellowcake and 21 Colonize, knew that Hyphy only 22 had an oral agreement with the 23 Group, and therefore approached 24 Chavez, in or about March 2019, 25 about selling the Los Originales 26 Albums to Yellowcake.</p> <p>27 Begakis Decl. at ¶ 8, Exhibit “H” 28 thereto, Hernandez Depo I at 51:9-11, 116:18-117:14, 148:24-149:5; Begakis Decl. at ¶ 12, Exhibit “L” thereto, Chavez Depo II at 77:13-17, 79:7-9, 79:17-80:2, 81:7-16.</p>	
<p>29 29. Chavez, who at this time was 30 advanced in age and suffering from 31 significant health problems, which 32 prevented him from performing or 33 generating income, therefore agreed 34 to accept \$500,000 for the Albums.</p>	

<p><u>Hyphy's Undisputed Material Facts and Supporting Evidence</u></p>	<p><u>Chavez's Responses and Supporting Evidence</u></p>
<p>3 Begakis Decl. at ¶ 8, Exhibit "H" 4 thereto, Hernandez Depo I at 107:4-20; 5 Begakis Decl. at ¶ 12, Exhibit "L" 6 thereto, Chavez Depo II at 77:13-17, 7 79:7-9, 79:17-80:2, 80:5-13, 81:7-16, 8 88:25-89:9.</p>	
<p>7 30. Chavez and Yellowcake attempted 8 to codify their purported agreement 9 via an "Asset Purchase and 10 Assignment Agreement" executed 11 on or about March 21, 2019 (the "Asset Purchase Agreement").</p>	
<p>12 Begakis Decl. at ¶ 5, Exhibit "E" thereto, 13 Plaintiff/Counter-Defendant's Document 14 Production (PLF000021-PLF000039).</p>	
<p>15 31. In Section 13.e. of the Asset 16 Purchase Agreement, Chavez 17 represented and warranted to 18 Yellowcake that Chavez was "the 19 only owner of" the Albums, and 20 possessed "good and marketable 21 title" thereto at the time of sale.</p>	
<p>22 Begakis Decl. at ¶ 5, Exhibit "E" thereto, 23 Plaintiff/Counter-Defendant's Document 24 Production (PLF00024).</p>	
<p>25 32. Chavez never obtained signed 26 written agreements from Flores, 27 Vargas or Hyphy acquiring each 28 party's respective contributions to, and rights in, the Albums and sound recordings embodied thereon.</p>	
<p>29 Begakis Decl. at ¶ 4, Exhibit "D" 30 thereto, Yellowcake Interrogatory 31 Responses at pp. 4-5; Begakis Decl. at ¶ 32</p>	

<u>Hyphy's Undisputed Material Facts</u>	<u>Chavez's Responses and Supporting Evidence</u>
5, Exhibit "E" thereto, Yellowcake Responses to Request for Production at p. 4.	
II. <u>ALL OF CHAVEZ'S OTHER ARGUMENTS ARE IRRELEVANT</u>	
<u>Hyphy's Undisputed Material Facts</u>	<u>Chavez's Responses and Supporting Evidence</u>
33. Hyphy is a record label in the business of collaborating with recording artists to produce, distribute, and otherwise exploit sound and audiovisual recordings by such artists, coupled with artwork.	
Declaration of John Begakis (<i>Begakis Decl.</i>) at ¶ 6, Exhibit "F" thereto, Jose Martinez Deposition Transcript	
(<i>Martinez Depo</i>) at 13:6-14:6.	
34. Counter-Defendant Jesus Chavez Sr. (<i>Chavez</i>) is the lead singer of the Spanish-language musical group Los Originales De San Juan (the <i>Group</i>).	
Begakis Decl. at ¶ 11, Exhibit "K" thereto, Jesus Chavez, Sr. Deposition, Volume I (<i>Chavez Depo I</i>) at 25:13-14; Begakis Decl. at ¶ 12, Exhibit "L" thereto, Jesus Chavez, Sr. Deposition, Volume II (<i>Chavez Depo II</i>) at 16:22-17:5.	
35. The Group operates as a co-equal partnership comprised of Chavez, accordion player Domingo Torres Flores (<i>Flores</i>), and drummer	

<p>1 <u>Hyphy's Undisputed Material Facts</u> 2 <u>and Supporting Evidence</u></p>	<p>1 <u>Chavez's Responses and Supporting</u> 2 <u>Evidence</u></p>
<p>3 Alfonso Vargas (“<i>Vargas</i>”).</p> <p>4 Begakis Decl. at ¶ 9, Exhibit “I” thereto, 5 Deposition Transcript of Alfonso Vargas 6 (“<i>Vargas Depo</i>”) at 17:16-19, 27:17-22, 7 143:7-10, 143:14-16, 143:17-20, 143:25- 8 144:3, 144:4-7; Begakis Decl. at ¶ 10, 9 Exhibit “J” thereto, Deposition 10 Transcript of Domingo Torres Flores 11 (“<i>Flores Depo</i>”) at 47:15-25, 48:19-23, 12 82:13-15, 82:22-83:2, 83:4-13, 85:25- 13 86:11, 86:13-21; Begakis Decl. at ¶ 11, 14 Exhibit “K” thereto, Chavez Depo I at 15 18:16-19:3, 20:8-16, 21:16-19; Begakis 16 Decl. at ¶ 12, Exhibit “L” thereto, 17 Chavez Depo II at 20:20-21:16, 26:13- 18 20, 31:8-16, 33:18-34:1, 38:8-18, 41:13- 19 42:2.</p>	
<p>20 36. In or about February 2013, Hyphy 21 and the Group began working 22 together to co-create various sound 23 recordings to be embodied on 24 multiple albums (collectively, the 25 “<i>Los Originales Albums</i>” or 26 “<i>Albums</i>”), which they had orally 27 agreed amongst themselves were to 28 be owned by Hyphy (the “<i>Agreement</i>”).</p> <p>29 Declaration of Jose Martinez (“<i>Martinez</i> 30 <i>Decl.</i>”) at ¶ 3; Begakis Decl. at ¶ 11, 31 Exhibit “K” thereto, Chavez Depo I at 32 34:7-11; Begakis Decl. at ¶ 12, Exhibit 33 “L” thereto, Chavez Depo II at 19:14-17, 34 32:16-20, 35:12-21.</p>	
<p>35 37. The albums created pursuant to the 36 Agreement were entitled (1) 37 “Amigos y Contrarios”; (2)</p>	

<p>1 Hyphy's Undisputed Material Facts 2 and Supporting Evidence</p>	<p>1 Chavez's Responses and Supporting 2 Evidence</p>
<p>3 “Corridos de Poca M”; (3) “El 4 Campesino”; (4) “Desde La Cantina 5 de Mi Barrio (En Vivo)”; and (5) 6 “Nuestra Historia (En Vivo)” 7 (collectively, the “Los Originales 8 Albums” or “Albums”).</p> <p>9 Martinez Decl. at ¶ 4; Begakis Decl. at ¶ 10 6, Exhibit “F” thereto, Martinez Depo at 11 44:7-23, 51:22-25.</p>	
<p>12 38. One of the other two albums 13 identified in Yellowcake’s 14 Complaint, entitled “Chuy Chavez y 15 Sus Amigos,” has no connection to 16 this dispute and wasn’t even 17 recorded by Chavez.</p> <p>18 Martinez Decl. at ¶ 4; Begakis Decl. at ¶ 19 6, Exhibit “F” thereto, Martinez Depo at 20 44:24:-9, 154:11-155:25.</p>	
<p>21 39. Though this Agreement was not 22 initially memorialized in writing, 23 Flores and Vargas understood that 24 such Agreement existed, and 25 therefore intended that all rights in 26 and to their recording services, and 27 the five Albums produced under the 28 Agreement and pursuant to such 29 services, be conveyed to Hyphy.</p> <p>30 Martinez Decl. at ¶¶ 4-5. Declaration of 31 Domingo Torres Flores (“Flores Decl.”) 32 at ¶¶ 3-5; Declaration of Alfonso Vargas 33 (“Vargas Decl.”) at ¶¶ 3-5</p>	
<p>34 40. Flores and Vargas later confirmed 35 their belief and intent to convey all 36 rights in the Albums to Hyphy by 37 executing enforceable Copyright</p>	

<p>1 <u>Hyphy's Undisputed Material Facts</u> 2 <u>and Supporting Evidence</u></p>	<p>1 <u>Chavez's Responses and Supporting</u> 2 <u>Evidence</u></p>
<p>3 Assignment Agreements on or 4 about March 22, 2022 (collectively 5 the “<i>Assignments</i>”) 6 Martinez Decl. at ¶ 5, Exhibit “A” thereto.</p>	
<p>7 41. Unlike larger record labels, 8 however, Hyphy closely 9 collaborated with the Group to create the Albums.</p>	
<p>10 Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 11 6, Exhibit “F” thereto, Martinez Depo at 12 75:6-76:25, 83:11-84:22, 84:24-85:8, 85:14-86:16.</p>	
<p>13 42. For the first three (of five) of the 14 Los Originales Albums, Hyphy 15 helped determine the “theme and 16 overall creative direction of each 17 Album.</p> <p>18 Martinez Decl. at ¶ 6.</p>	
<p>19 43. For the first three (of five) of the 20 Los Originales Albums, Hyphy 21 selected the songs to be included in 22 each Album.</p> <p>23 Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 24 6, Exhibit “F” thereto, Martinez Depo at 25 83:11-84:22.</p>	
<p>26 44. For the first three (of five) of the 27 Los Originales Albums, Hyphy 28 selected the recording studio and paid for all costs associated with the recording of each Album.</p> <p>29 Martinez Decl. at ¶ 6.</p>	
<p>30 45. For the first three (of five) of the</p>	

<u>1</u> <u>Hyphy's Undisputed Material Facts</u> <u>2</u> <u>and Supporting Evidence</u>	<u>Chavez's Responses and Supporting</u> <u>Evidence</u>
<u>3</u> <u>Los Originales Albums, Hyphy</u> <u>4</u> <u>hired the sound engineer.</u> <u>5</u> <u>Martinez Decl. at ¶ 6; Begakis Decl. at ¶</u> <u>6</u> <u>6, Exhibit "F" thereto, Martinez Depo at</u> <u>7</u> <u>59:21-60:7, 61:10-16.</u>	
<u>8</u> <u>46. For the first three (of five) of the</u> <u>9</u> <u>Los Originales Albums, Hyphy paid</u> <u>the Group a substantial amount to</u> <u>record the Albums.</u>	
<u>10</u> <u>Martinez Decl. at ¶ 6.</u>	
<u>11</u> <u>47. For the first three (of five) of the</u> <u>12</u> <u>Los Originales Albums, Hyphy</u> <u>13</u> <u>oversaw and generally supervised</u> <u>14</u> <u>the recording and production of</u> <u>15</u> <u>each Album.</u> <u>16</u> <u>Martinez Decl. at ¶ 6; Begakis Decl. at ¶</u> <u>17</u> <u>6, Exhibit "F" thereto, Martinez Depo at</u> <u>18</u> <u>85:14-86:16.</u>	
<u>19</u> <u>48. For the final two (of five) of the Los</u> <u>20</u> <u>Originales Albums, Hyphy also</u> <u>21</u> <u>selected and paid for the venue of</u> <u>22</u> <u>the live performance.</u> <u>23</u> <u>Martinez Decl. at ¶ 6; Begakis Decl. at ¶</u> <u>24</u> <u>6, Exhibit "F" thereto, Martinez Depo at</u> <u>25</u> <u>75:6-25.</u>	
<u>26</u> <u>49. For the final two (of five) of the Los</u> <u>27</u> <u>Originales Albums, Hyphy also</u> <u>28</u> <u>selected the songs to be performed</u> <u>at the live performance (and then</u> <u>recorded for the Albums).</u> <u>29</u> <u>Martinez Decl. at ¶ 6; Begakis Decl. at ¶</u> <u>30</u> <u>6, Exhibit "F" thereto, Martinez Depo at</u> <u>31</u> <u>75:6-25.</u>	

<u>Hyphy's Undisputed Material Facts</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p> <p>38</p> <p>39</p> <p>40</p> <p>41</p> <p>42</p> <p>43</p> <p>44</p> <p>45</p> <p>46</p> <p>47</p> <p>48</p> <p>49</p> <p>50</p> <p>51</p> <p>52</p> <p>53</p> <p>54</p> <p>55</p> <p>56</p> <p>57</p> <p>58</p> <p>59</p> <p>60</p> <p>61</p> <p>62</p> <p>63</p> <p>64</p> <p>65</p> <p>66</p> <p>67</p> <p>68</p> <p>69</p> <p>70</p> <p>71</p> <p>72</p> <p>73</p> <p>74</p> <p>75</p> <p>76</p> <p>77</p> <p>78</p> <p>79</p> <p>80</p> <p>81</p> <p>82</p> <p>83</p> <p>84</p> <p>85</p> <p>86</p> <p>87</p> <p>88</p> <p>89</p> <p>90</p> <p>91</p> <p>92</p> <p>93</p> <p>94</p> <p>95</p> <p>96</p> <p>97</p> <p>98</p> <p>99</p> <p>100</p> <p>101</p> <p>102</p> <p>103</p> <p>104</p> <p>105</p> <p>106</p> <p>107</p> <p>108</p> <p>109</p> <p>110</p> <p>111</p> <p>112</p> <p>113</p> <p>114</p> <p>115</p> <p>116</p> <p>117</p> <p>118</p> <p>119</p> <p>120</p> <p>121</p> <p>122</p> <p>123</p> <p>124</p> <p>125</p> <p>126</p> <p>127</p> <p>128</p> <p>129</p> <p>130</p> <p>131</p> <p>132</p> <p>133</p> <p>134</p> <p>135</p> <p>136</p> <p>137</p> <p>138</p> <p>139</p> <p>140</p> <p>141</p> <p>142</p> <p>143</p> <p>144</p> <p>145</p> <p>146</p> <p>147</p> <p>148</p> <p>149</p> <p>150</p> <p>151</p> <p>152</p> <p>153</p> <p>154</p> <p>155</p> <p>156</p> <p>157</p> <p>158</p> <p>159</p> <p>160</p> <p>161</p> <p>162</p> <p>163</p> <p>164</p> <p>165</p> <p>166</p> <p>167</p> <p>168</p> <p>169</p> <p>170</p> <p>171</p> <p>172</p> <p>173</p> <p>174</p> <p>175</p> <p>176</p> <p>177</p> <p>178</p> <p>179</p> <p>180</p> <p>181</p> <p>182</p> <p>183</p> <p>184</p> <p>185</p> <p>186</p> <p>187</p> <p>188</p> <p>189</p> <p>190</p> <p>191</p> 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<p>738</p> <p>739</p> <p>740</p> <p>741</p> <p>742</p> <p>743</p> <p>744</p> <p>745</p> <p>746</p> <p>747</p> <p>748</p> <p>749</p> <p>750</p> <p>751</p> <p>752</p> <p>753</p> <p>754</p> <p>755</p> <p>756</p> <p>757</p> <p>758</p> <p>759</p> <p>760</p> <p>761</p> <p>762</p> <p>763</p> <p>764</p> <p>765</p> <p>766</p> <p>767</p> <p>768</p> <p>769</p> <p>770</p> <p>771</p> <p>772</p> <p>773</p> <p>774</p> <p>775</p> <p>776</p> <p>777</p> <p>778</p> <p>779</p> <p>780</p> <p>781</p> <p>782</p> <p>783</p> <p>784</p> <p>785</p> <p>786</p> <p>787</p> <p>788</p> <p>789</p> <p>790</p> <p>791</p> <p>792</p> <p>793</p> <p>794</p> <p>795</p> <p>796</p> <p>797</p> <p>798</p> <p>799</p> <p>800</p> <p>801</p> <p>802</p> <p>803</p> <p>804</p> <p>805</p> <p>806</p> <p>807</p> <p>808</p> <p>809</p> <p>810</p> <p>811</p> <p>812</p> <p>813</p> <p>814</p> <p>815</p> <p>816</p> <p>817</p> <p>818</p> <p>819</p> <p>820</p> <p>821</p> <p>822</p> <p>823</p> <p>824</p> <p>825</p> <p>826</p> <p>827</p> <p>828</p> <p>829</p> <p>830</p> <p>831</p> <p>832</p> <p>833</p> <p>834</p> <p>835</p> <p>836</p> <p>837</p> <p>838</p> <p>839</p> <p>840</p> <p>841</p> <p>842</p> <p>843</p> <p>844</p> <p>845</p> <p>846</p> <p>847</p> <p>848</p> <p>849</p> <p>850</p> <p>851</p> <p>852</p> <p>853</p> <p>854</p> <p>855</p> <p>856</p> <p>857</p> <p>858</p> <p>859</p> <p>860</p> <p>861</p> <p>862</p> <p>863</p> <p>864</p> <p>865</p> <p>866</p> <p>867</p> <p>868</p> <p>869</p> <p>870</p> <p>871</p> <p>872</p> <p>873</p> <p>874</p> <p>875</p> <p>876</p> <p>877</p> <p>878</p> <p>879</p> <p>880</p> <p>881</p> <p>882</p> <p>883</p> <p>884</p> <p>885</p> <p>886</p> <p>887</p> <p>888</p> <p>889</p> <p>890</p> <p>891</p> <p>892</p> <p>893</p> <p>894</p> <p>895</p> <p>896</p> <p>897</p> <p>898</p> <p>899</p> <p>900</p> <p>901</p> <p>902</p> <p>903</p> <p>904</p> <p>905</p> <p>906</p> <p>907</p> <p>908</p> <p>909</p> <p>910</p> <p>911</p> <p>912</p> <p>913</p> <p>914</p> <p>915</p> <p>916</p> <p>917</p> <p>918</p> <p>919</p> <p>920</p> <p>921</p> <p>922</p> <p>923</p> <p>924</p> <p>925</p> <p>926</p> <p>927</p> <p>928</p> <p>929</p> <p>930</p> <p>931</p> <p>932</p> <p>933</p> <p>934</p> <p>935</p> <p>936</p> <p>937</p> <p>938</p> <p>939</p> <p>940</p> <p>941</p> <p>942</p> <p>943</p> <p>944</p> <p>945</p> <p>946</p> <p>947</p> <p>948</p> <p>949</p> <p>950</p> <p>951</p> <p>952</p> <p>953</p> <p>954</p> <p>955</p> <p>956</p> <p>957</p> <p>958</p> <p>959</p> <p>960</p> <p>961</p> <p>962</p> <p>963</p> <p>964</p> <p>965</p> <p>966</p> <p>967</p> <p>968</p> <p>969</p> <p>970</p> <p>971</p> <p>972</p> <p>973</p> <p>974</p> <p>975</p> <p>976</p> <p>977</p> <p>978</p> <p>979</p> <p>980</p> <p>981</p> <p>982</p> <p>983</p> <p>984</p> <p>985</p> <p>986</p> <p>987</p> <p>988</p> <p>989</p> <p>990</p> <p>991</p> <p>992</p> <p>993</p> <p>994</p> <p>995</p> <p>996</p> <p>997</p> <p>998</p> <p>999</p> <p>9999</p>	<u>Evidence</u>
50. For the final two (of five) of the Los Originales Albums, Hyphy also directly employed, supervised, and directed the services of the sound engineer and videographer who each recorded the audio and video of the live performance.	
Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 75:6-25.	
51. For the final two (of five) of the Los Originales Albums, Hyphy also wrote a script for the history of the Group as presented as part of the live performance, and hired an "MC"/commentator who narrated the script.	
Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 75:6-25.	
52. For the final two (of five) of the Los Originales Albums, Hyphy also re-recorded whole portions of the guitarist's contributions to the live performance afterwards, using a new guitarist selected, hired and paid for by Hyphy.	
Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 75:6-25.	
53. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they were equally involved in all activities of the Band, which existed	

<u>Hyphy's Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>as an unincorporated partnership in which all Band members were joint owners, participants and contributors.</p> <p>Begakis Decl. at ¶ 9, Exhibit "I" thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 10, Exhibit "J" thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 11, Exhibit "K" thereto, Chavez Depo I at 18:23-19:3.</p>	
<p>54. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they were equally credited on all Albums in which each of them made contributions.</p> <p><i>See</i> Begakis Decl. at ¶ 9, Exhibit "I" thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 10, Exhibit "J" thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21.</p>	
<p>55. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they shared equally in all profits of the Band, and were granted equal access to inspect all records related to the Band's receipt of all such profits.</p>	
<p>Begakis Decl. at ¶ 9, Exhibit "I" thereto,</p>	

<p>1 <u>Hyphy's Undisputed Material Facts</u> 2 <u>and Supporting Evidence</u></p>	<p>1 <u>Chavez's Responses and Supporting</u> 2 <u>Evidence</u></p>
<p>3 Vargas Depo at 27:17-22, 143:7-10, 4 143:14-16, 143:17-20, 143:25-144:3, 5 144:4-7; Begakis Decl. at ¶ 10, Exhibit 6 "J" thereto, Flores Depo at 47:15-25, 7 82:13-15, 82:22-83:2, 83:4-13, 85:25- 8 86:11, 86:13-21; Begakis Decl. at ¶ 12, 9 Exhibit "L" thereto, Chavez Depo II at 10 20:20-21:16, 26:13-20, 31:8-16, 33:18- 11 34:1, 38:8-18, 41:13-42:2.</p>	
<p>12 56. In addition to its original creative 13 contributions to the production, 14 recording and overall creation of the 15 Los Originales Albums, Hyphy also 16 designed and created the artwork 17 featured on the cover of each 18 Album (the "<i>Album Artwork</i>").</p>	
<p>19 Martinez Decl. at ¶ 7; Begakis Decl. at ¶ 20 6, Exhibit "F" thereto, Martinez Depo at 21 127:12-21.</p>	
<p>22 57. Hyphy released the Albums, with 23 the Album Artwork, for distribution 24 through all available digital service 25 providers ("DSPs") between 2013 26 and 2017.</p>	
<p>27 Martinez Decl. at ¶ 8, Exhibit "B" 28 thereto; Begakis Decl. at ¶ 6, Exhibit "F" 29 thereto, Martinez Depo at 44:7-23; 30 51:18-25; 67:24-69:5.</p>	
<p>31 58. Thereafter, Hyphy obtained 32 copyright registrations for all of 33 such Album Artwork.</p>	
<p>34 Martinez Decl. at ¶ 9, Exhibit "C" 35 thereto; Begakis Decl. at ¶ 6, Exhibit "F" 36 thereto, Martinez Depo at 133:9-136:5.</p>	
<p>37 59. Plaintiff/Counter-Defendant</p>	

<p>1 <u>Hyphy's Undisputed Material Facts</u> 2 <u>and Supporting Evidence</u></p>	<p>1 <u>Chavez's Responses and Supporting</u> 2 <u>Evidence</u></p>
<p>3 Yellowcake, Inc. (“Yellowcake”) is 4 a competing record label and 5 distributor of sound recordings, 6 utilizing Counter-Defendant 7 Colonize Media, Inc. (“Colonize”) 8 as its “distribution arm” to release 9 and exploit rights acquired by 10 Yellowcake.</p> <p>11 Begakis Decl. at ¶ 7, Exhibit “G” 12 thereto, Deposition Transcript of Kevin 13 Berger (“Berger Depo”) at 91:19-23; 14 Begakis Decl. at ¶ 8, Exhibit “H” 15 thereto, Deposition Transcript of Jose 16 David Hernandez, Volume I 17 (“Hernandez Depo I”) at 77:19-21.</p>	
<p>18 60. Counter-Defendant Jose David 19 Hernandez (“Hernandez”), who is a 20 co-owner of both Yellowcake and 21 Colonize, knew that Hyphy only 22 had an oral agreement with the 23 Group, and therefore approached 24 Chavez, in or about March 2019, 25 about selling the Los Originales 26 Albums to Yellowcake.</p> <p>27 Begakis Decl. at ¶ 8, Exhibit “H” 28 thereto, Hernandez Depo I at 51:9-11, 116:18-117:14, 148:24-149:5; Begakis Decl. at ¶ 12, Exhibit “L” thereto, Chavez Depo II at 77:13-17, 79:7-9, 79:17-80:2, 81:7-16.</p>	
<p>29 61. Chavez, who at this time was 30 advanced in age and suffering from 31 significant health problems, which 32 prevented him from performing or 33 generating income, therefore agreed 34 to accept \$500,000 for the Albums.</p>	

<u>Hyphy's Undisputed Material Facts</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>3 Begakis Decl. at ¶ 8, Exhibit "H" 4 thereto, Hernandez Depo I at 107:4-20; 5 Begakis Decl. at ¶ 12, Exhibit "L" 6 thereto, Chavez Depo II at 77:13-17, 7 79:7-9, 79:17-80:2, 80:5-13, 81:7-16, 8 88:25-89:9.</p>	
<p>9</p>	
<p>10 62. Chavez and Yellowcake attempted 11 to codify their purported agreement 12 via an "Asset Purchase and 13 Assignment Agreement" executed 14 on or about March 21, 2019 (the 15 "Asset Purchase Agreement").</p>	
<p>16 Begakis Decl. at ¶ 5, Exhibit "E" thereto, 17 Plaintiff/Counter-Defendant's Document 18 Production (PLF000021-PLF000039).</p>	
<p>19</p>	
<p>20 63. In Section 13.e. of the Asset 21 Purchase Agreement, Chavez 22 represented and warranted to 23 Yellowcake that Chavez was "the 24 only owner of" the Albums, and 25 possessed "good and marketable title" thereto at the time of sale.</p>	
<p>26 Begakis Decl. at ¶ 5, Exhibit "E" thereto, 27 Plaintiff/Counter-Defendant's Document 28 Production (PLF00024).</p>	
<p>29</p>	
<p>30 64. Chavez never obtained signed 31 written agreements from Flores, 32 Vargas or Hyphy acquiring each 33 party's respective contributions to, 34 and rights in, the Albums and sound 35 recordings embodied thereon.</p>	
<p>36 Begakis Decl. at ¶ 4, Exhibit "D" 37 thereto, Yellowcake Interrogatory 38 Responses at pp. 4-5; Begakis Decl. at ¶</p>	

<u>1</u> <u>2</u> <u>3</u> <u>4</u> <u>5</u> <u>6</u> <u>7</u> <u>8</u> <u>9</u> <u>10</u> <u>11</u> <u>12</u> <u>13</u> <u>14</u> <u>15</u> <u>16</u> <u>17</u> <u>18</u> <u>19</u> <u>20</u> <u>21</u> <u>22</u> <u>23</u> <u>24</u> <u>25</u> <u>26</u> <u>27</u> <u>28</u>	<u>1</u> <u>2</u> <u>3</u> <u>4</u> <u>5</u> <u>6</u> <u>7</u> <u>8</u> <u>9</u> <u>10</u> <u>11</u> <u>12</u> <u>13</u> <u>14</u> <u>15</u> <u>16</u> <u>17</u> <u>18</u> <u>19</u> <u>20</u> <u>21</u> <u>22</u> <u>23</u> <u>24</u> <u>25</u> <u>26</u> <u>27</u> <u>28</u>
<u>1</u> <u>2</u> <u>3</u> <u>4</u> <u>5</u> <u>6</u> <u>7</u> <u>8</u> <u>9</u> <u>10</u> <u>11</u> <u>12</u> <u>13</u> <u>14</u> <u>15</u> <u>16</u> <u>17</u> <u>18</u> <u>19</u> <u>20</u> <u>21</u> <u>22</u> <u>23</u> <u>24</u> <u>25</u> <u>26</u> <u>27</u> <u>28</u>	<u>1</u> <u>2</u> <u>3</u> <u>4</u> <u>5</u> <u>6</u> <u>7</u> <u>8</u> <u>9</u> <u>10</u> <u>11</u> <u>12</u> <u>13</u> <u>14</u> <u>15</u> <u>16</u> <u>17</u> <u>18</u> <u>19</u> <u>20</u> <u>21</u> <u>22</u> <u>23</u> <u>24</u> <u>25</u> <u>26</u> <u>27</u> <u>28</u>

DATED: August 15, 2023

ALTVIEW LAW GROUP, LLP

By: 

JOHN M. BEGAKIS
Attorneys for Defendant/Counterclaimant
 HYPHY MUSIC, INC., a California
 corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing electronically filed document has been served via a "Notice of Electronic Filing" automatically generated by the CM/ECF System and sent by e-mail to all attorneys in the case who are registered as CM/ECF users and have consented to electronic service pursuant to L.R. 5-3.3.

Dated: August 15, 2023

By: /s/ John Begakis
John M. Begakis